

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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## NERRY PATHAK.

Case No. 17-cv-00102

Plaintiff,

Case No. 17-cv-1546

V.

SIERRA MEAT COMPANY, et al.,  
Defendants.

**ORDER  
ON SANCTIONS  
AND  
CONSOLIDATION OF CASES**

## ANSHU BHARAT PATHAK,

## Cross Complainant,

V.

NERRY PATHAK, et al.,

## Cross Defendants.

## I. INTRODUCTION

Before the Court is Defendant / Cross Defendant Sierra Meat Company's Motion for a Temporary Restraining Order (ECF 52) filed in case No. 17-cv-00102-RFB-GWF. For the reasons stated below, the Court grants relief pursuant to its inherent powers. The Motion for a Temporary Restraining Order is therefore denied.

The above-captioned cases are also ordered consolidated.

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## BACKGROUND

On January 11, 2017, Plaintiff Nerry Pathak (“Nerry”) filed a complaint (ECF 1) against Sierra Meat and other defendants, including Anshu Pathak. On March 15, 2017, Nerry filed a First Amended Complaint (ECF 7). On April 6, 2017, Anshu answered the complaint and filed a cross-complaint (ECF 10). On May 19, 2017, Anshu filed the First Amended Cross-Complaint (ECF 29). Sierra Meat categorically denies the allegations contained in the First Amended Complaint and the First Amended Cross-Complaint. Sierra Meat has filed motions to dismiss both the First Amended Complaint and the First Amended Cross-Complaint (ECF 14 and ECF 43).

Defendant / Cross Defendant Sierra alleges that Anshu Pathak has repeatedly contacted employees and officers directly, in spite of multiple admonitions to communicate only through counsel. Defendant / Cross Defendant Sierra meet seeks a temporary restraining order enjoining Anshu Pathak from (1) directly contacting or communicating with by any means whatsoever Sierra Meat or any of its officers, directors, and employees, including, but not limited to, Jonathan Mosbacher and Chris Flocchini, other than through Sierra Meat's counsel; and (2) being physically present within 100 yards of Sierra Meat's offices or residences or any of Sierra Meat's directors, officers, and employees, including, but not limited to Jonathan Mosbacher and Chris Flocchini.

On June 30, 2017, the Court issued a minute order setting a hearing on the Motion for a Temporary Restraining Order for July 5, 2017, at 11:30AM. On the morning of July 5, 2017, in a communication to opposing counsel, Anshu Pathak stated that he could not attend the hearing “due to [his] health.” He did not appear at the hearing or provide any further explanation. Anshu Pathak provided no substantive response to the Motion in that communication, or in any filing with the Court. The Court therefore credits and accepts the credible allegations in the Motion for a Temporary Restraining Order regarding Anshu Pathak’s conduct, which are supported by declarations and exhibits identified as copies of the email communications from Anshu Pathak to various Sierra employees. The Court also finds that Anshu Pathak has not established a credible reason for not attending the hearing on July 5<sup>th</sup>.

## II. FACTUAL FINDINGS

1                   The Court credits and finds the following facts from the Motion for a Temporary  
2 Restraining Order.

3                   Since the filing of Anshu's cross-claim, Anshu has repeatedly contacted the directors,  
4 officers and employees of Sierra Meat, including sending nearly 100 emails and threatening to  
5 confront the directors, employees and officers at their work place or at their homes in front of their  
6 families. From April 20, 2017 through May 31, 2017, Anshu sent 70 emails to Sierra Meat's  
7 officers, directors, and employees. Mot. for TRO, Ex. A at ¶ 4. From June 7, 20173 to June 27,  
8 2017, Anshu sent 23 additional emails to Sierra Meat's officers, directors and employees. Id. at ¶  
9 5.

10                  In response to Anshu's communications, counsel for Sierra Meat has repeatedly demanded  
11 that Anshu communicate solely with counsel, who has been designated by Sierra Meat to handle  
12 this litigation matter and to field all correspondence related to this lawsuit from Anshu and Nerry,  
13 both of whom represent themselves. On April 20, 2017, Sierra Meat's counsel notified Anshu that  
14 his correspondence to Sierra Meat's employees must stop and demanded that Anshu communicate  
15 directly with counsel and counsel only. Ex. A at ¶¶ 6-7. Anshu, however, did not cease his  
16 communications, but rather sent fourteen additional emails in the next six days. Id. at ¶ 8. As a  
17 result, counsel for Sierra Meat again demanded that Anshu comply with Sierra Meat's request to  
18 stop emailing its employees and to communicate only with its designated representative. Id. at ¶¶  
19 9-11. Counsel notified Anshu that, if necessary, the issue would be raised before this Court. Id. at  
20 ¶¶ 10-11.

21                  Anshu continued sending unsolicited emails to Sierra Meat's employees in May 2017. On  
22 May 11, 2017, counsel for Sierra Meat, for the third time, respectfully demanded that Anshu refrain  
23 from further harassing Sierra Meat's officers and employees with emails and to direct all future  
24 correspondence to counsel. Ex. A at ¶¶ 12-13. On May 23, 2017, during a direct telephone  
25 conference with Anshu, counsel for Sierra Meat again demanded that Anshu stop contacting the  
26 employees of Sierra Meat to which Anshu agreed. Id. at ¶¶ 15. Anshu continued, however, to make  
27 unwarranted contact. Id. at ¶ 16. On May 25, 2017, counsel for Sierra Meat, confirmed in an email  
28 Anshu's agreement to communicate solely with counsel, not Sierra Meat, its officers, directors,

1 and employees, yet Anshu continued with his harassing communications. Id. at ¶¶ 17-18.

2 On May 30, 2017, during a hearing regarding briefing deadlines for Sierra Meat's motion  
3 to dismiss, counsel for Sierra Meat raised with Magistrate Judge George W. Foley, Jr. counsel's  
4 concern regarding Anshu's repeated and improper communications with Sierra Meat's officers  
5 and employees. See ECF 35. Although Anshu did not attend or participate in the hearing, counsel  
6 for Sierra Meat notified the Court that Anshu had been repeatedly advised to communicate directly  
7 with counsel and not Sierra Meat. See Id. The next day, counsel for Sierra Meat, for the sixth time,  
8 demanded that Anshu conduct himself in a professional matter and stop emailing Sierra Meat's  
9 employees. Ex. A at ¶¶ 19-20. Counsel also reminded Anshu of his previous agreement to abide  
10 by this demand. Id. at ¶¶ 20-21.

11 Finally, on June 7, 2017, counsel for Sierra Meat again reiterated to Anshu the request to  
12 stop contacting Sierra Meat or its employees and continuing to harass them. Ex. A at ¶¶ 22-24.  
13 Anshu responded, acknowledging that “[i]t's a good idea that I deal directly with one person.” Id.  
14 at ¶¶ 23-24. Nevertheless, Anshu continues his improper communications with individuals  
15 connected to Sierra Meat.

16 Most recently, on June 27, 2017, Anshu forwarded to Sierra Meat's counsel, officers,  
17 directors, and employees an email exchange he had earlier that morning with one of Sierra Meat's  
18 alleged customers. Ex. A at ¶¶ 25, 29. In the email to the purported customer, Anshu disparaged  
19 Sierra Meat stating, “Sierra has problems selling their garbage meats and small retailers like you  
20 are being stabbed.” Id. at ¶¶ 26, 29. Later that morning, Anshu sent email correspondence to Sierra  
21 Meat's counsel, officers, directors, and employees and his brother, Nerry, encouraging Nerry to  
22 file his second amended complaint so that Anshu could then file his answer to the same. Ex. A at  
23 ¶¶ 27, 29. In the afternoon on that same day, June 27th, Anshu threatened to personally confront  
24 the employees of Sierra Meat at their place of business and videotape them being served with  
25 Nerry's second amended complaint. Ex. A at ¶¶ 30, 33. Anshu also attempted to confirm the  
26 personal residence of Mr. Flocchini through Sierra Meat's counsel and, when Anshu did not  
27 receive a response within 8 minutes, he forwarded the email containing the residence directly to  
28 Mr. Flocchini inquiring, “[i]s this your address to serve you or [sic] you want me to serve you at

1 your office?" Id. at ¶¶ 31, 33. Almost immediately thereafter, Anshu sent another email to Mr.  
2 Mosbacher inquiring whether he wanted to be personally served by Anshu at his residence or at  
3 his office. Id. at ¶¶ 32-33. Anshu also forwarded the home address of Rich Jersey, another  
4 employee of Sierra Meat, giving the indication that he too may be confronted at his home. Id. at  
5 ¶¶ 34-35.

6 Moreover, Anshu has sent correspondence hinting at possible physical violence or threats.  
7 See Ex. B at ¶¶ 6-7. In a March 5, 2014 email to Jonathan Mosbacher, Anshu Pathak wrote the  
8 following:

9 "Matt, stay away from me. Do not text me anymore. I know who I am. You should know  
10 that that I am a FELON for beating up my son. I have serious anger management problem  
11 with liars, crooks, alcoholics and drugs. Yes, I went to jail for 8 months for beating up my  
12 son and I did the right thing to stop him from the drugs. After his mom took the restraining  
13 order against me .... she lost the son. My son committed suicide in 2011. She was not able  
14 to stop him from drugs. I told the police to arrest him and I also told the Judge and the Jury  
15 that if he will take drugs again, I will beat him up again. I am Anshu Pathak, stay away  
16 from me. If you will talk about my son again in person, I will go back in jail again. I have  
17 no problem with that. Do you get it? Never ever talk about my son."

18 Therefore, upon receiving the June 27, 2017 email correspondence—threatening to personally  
19 confront employees at their place of business and videotape them being served with Nerry's second  
20 amended complaint—and in light of Anshu's incessant prior communications and his prior  
21 acknowledgment of having a history of violence, Sierra Meat's officers, directors, and employees  
22 became increasingly uncomfortable with the threat of Anshu personally showing up at their work  
23 place or homes where their families live, and they reasonably found such threats to be harassing  
24 and intimidating. See Ex. B at ¶¶ 6-8 and Ex. C at ¶ 6.

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### **III. LEGAL STANDARD**

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Sierra seeks a temporary restraining order pursuant to NRS 33.270, a Nevada workplace  
harassment statute. However, Plaintiff does not seek an injunction pursuant to any complaint; or

1 relief meant to preserve a status quo relevant to the merits of the case, but rather asks the Court to  
2 act to end litigation misconduct. For a federal court to grant a temporary restraining order or  
3 preliminary injunction, “there must be a relationship between the injury claimed in the motion for  
4 injunctive relief and the conduct asserted in the underlying complaint.” Pac. Radiation Oncology,  
5 LLC v. Queen's Med. Ctr., 810 F.3d 631, 636 (9th Cir. 2015). Whatever the potential applicability  
6 of the asserted Nevada statute, the Court finds that this dispute may be addressed pursuant to the  
7 Court’s inherent powers, and declines to consider an injunction under NRS 33.270.

8 There exists a “well established” principle that “[d]istrict courts have inherent power to  
9 control their dockets.” Atchison, Topeka & Santa Fe Ry. Co. v. Hercules Inc., 146 F.3d 1071, 1074  
10 (9th Cir. 1998) (internal quotation marks omitted). “All federal courts are vested with inherent  
11 powers enabling them to manage their cases and courtrooms effectively and to ensure obedience  
12 to their orders.” Aloe Vera of Am., Inc. v. United States, 376 F.3d 960, 964-65 (9th Cir. 2004).  
13 “Courts have the ability to address the full range of litigation abuses through their inherent powers.  
14 While it is preferable that courts utilize the range of federal rules and statutes dealing with  
15 misconduct and abuse of the judicial system, courts may rely upon their inherent powers to  
16 sanction bad faith conduct even where such statutes and rules are in place. F.J. Hanshaw  
17 Enterprises, Inc. v. Emerald River Development, Inc., 244 F.3d 1128, 1136 (9th Cir. 2001)  
18 (internal citations and quotation marks omitted).

19 “The standard for finding a party in civil contempt is well settled: The moving party has  
20 the burden of showing by clear and convincing evidence that the contemnors violated a specific  
21 and definite order of the court.” Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178 (9th Cir. 2003)

22 “Civil penalties must either be compensatory or designed to coerce compliance. In contrast,  
23 a flat unconditional fine totaling even as little as \$50 could be criminal if the contemnor has no  
24 subsequent opportunity to reduce or avoid the fine through compliance, and the fine is not  
25 compensatory. This is so regardless of whether the non-compensatory fine is payable to the court  
26 or to the complainant. Whether the fine is payable to the complainant may, however, be one  
27 relevant factor in determining whether the fine is compensatory or punitive.” In re Dyer, 233 F.3d  
28 1178, 1192 (9th Cir. 2003) (internal citations and quotation marks omitted).

## IV. DISCUSSION

2 The Court finds that Anshu Pathak has engaged in bad faith litigation/discovery conduct.  
3 The Court finds that Anshu Pathak has repeatedly initiated direct communications via email, in  
4 spite of numerous warnings to communicate only with counsel. Particularly in light of the prior,  
5 March 2014 email to Jonathan Mosbacher, an employee of Sierra, the Court finds the constant  
6 inappropriate messages to be intentionally harassing and intimidating. Although Anshu Pathak is  
7 a pro se litigant, he was repeatedly advised by opposing counsel not to directly communicate with  
8 Sierra officers or employees yet did not cease communications or bring the issue to the Court.  
9 Moreover, he acknowledged the propriety of communicating with a single representative before  
10 continuing to direct communications, including disparaging remarks not directly related to the  
11 litigation, to employees.

12        The Court further finds that Anshu Pathak has consistently engaged in unprofessional,  
13 misleading and abusive discovery conduct through his harassing and intimidating contacts. He  
14 has made implied threats of violence and suggested that he will physically confront employees of  
15 Sierra Meat at their homes or place of business. The Court does not find that he will conduct  
16 himself in an appropriate, professional and civil manner without a court order directing him to do  
17 so. Even with a court order, this Court is not confident that he will modify his behavior.  
18 Therefore, pursuant to the Court's inherent power, the Court orders Anshu Pathak to refrain from  
19 contacting or physically encountering employees of Sierra Meat except through Sierra Meat's  
20 counsel, and to cease any communications that contain implied or explicit threats or intimidating  
21 language. The Court is further ordering Anshu Pathak to appear at a hearing on **July 28, 2017 at**  
22 **4:00 p.m.** before this Court to confirm that he will conduct himself in a civil manner in this case  
23 and to confirm that he will actually participate in a meaningful way in discovery. His failure to  
24 appear at the hearing set in this Order can lead to sanctions, up to and including the entry of  
25 judgement against him and the dismissal of his claims in this case.

26 The Court does not find his proffered reason for failing to appear at the hearing on July 5,  
27 2017 to be credible at this time.

28 Anshu Pathak will have an opportunity at the July 28 hearing to argue against and present

1 evidence contrary to the factual findings regarding his conduct in this Order. If the Court finds his  
2 arguments or proffered information/evidence to be credible, it will reconsider its findings in this  
3 Order.

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5 **V. CONSOLIDATION OF CASES**

6 On June 1, 2017, the Plaintiff in this case, filed a second case against three defendants  
7 named in the instant case, and adding Armand Agra, Inc., as an additional defendant. Case No. 17-  
8 cv-01546-RFB-NJK, ECF No. 1. Armand Agra has submitted a certificate of interested party in  
9 this case, indicating that it owns ten percent or more of Sierra Meat Company's stock. Case No.  
10 17-cv-00102, ECF No. 15. Because both cases involve the same dispute, the Court has determined  
11 that the actions are related and that there is good cause to consolidate them. Further, consolidation  
12 will promote judicial efficiency, avoid duplicative filings by the parties, and will not result in  
13 prejudice to the parties.

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15 **VI. CONCLUSION**

16 **IT IS HEREBY ORDERED** that Defendant / Crossclaimant **Anshu Pathak** shall not  
17 communicate, in person, by email, or by any other means, with any employees, officers, directors,  
18 contractors, or agents thereof, of Sierra Meat Company, but shall direct all communications to  
19 counsel for Sierra Meat, Mr. Matthew B. Hippler. Any future violations of this Order may result  
20 in monetary sanctions, entry of judgment against Anshu Pathak, dismissal of his claims and/or  
21 referral for criminal prosecution for contempt of court.

22 **IT IS FURTHER ORDERED** that a hearing regarding Anshu Pathak's discovery conduct  
23 in this case is set for **July 28, 2017 at 4:00 p.m.** in courtroom 7D. **Anshu Pathak is ordered to**  
24 **appear at this hearing.** Failure to appear at this hearing may lead to monetary sanctions, the entry  
25 of judgement against Anshu Pathak, the dismissal of his claims, or some combination or all of  
26 these sanctions.

27 **IT IS FURTHER ORDERED** that case no. 2:17-cv-01546-RFB-NJK is  
28 CONSOLIDATED with case no. 2:17-cv-00102-RFB-GWF. These cases are consolidated on the

1 basis of judicial economy and commonality of subject. Case no. 2:17-cv-00102-RFB-GWF shall  
2 be the lead case and case no. 2:17-cv-01546 shall be added as a member case. All further  
3 documents shall be filed in the lead case 2:17-cv-00102-RFB-GWF and shall bear that case  
4 number.

5 **IT IS FURTHER ORDERED** that a status hearing on BOTH these cases is set for July  
6 28, 2017 at 4:00 p.m. in courtroom 7D. **ALL PARTIES** are ordered to appear. **Failure to appear**  
7 **at this status conference may lead to monetary sanctions, entry of judgement against the**  
8 **nonappearing party, the dismissal of claims of the nonappearing party, or some combination**  
9 **or all of these sanctions.**

10 **IT IS FURTHER ORDERED** that case no. 2:17-cv-01546-RFB-NJK is REASSIGNED  
11 to Magistrate Judge Foley for all further proceedings.

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13 DATED this 6th day of July, 2017.



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15 RICHARD F. BOULWARE, II  
16 UNITED STATES DISTRICT JUDGE  
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